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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ANDREW D. WEISS et al.,

Plaintiffs, Cross-defendants and
Respondents,

v.

TOAN THAI et al.,

Defendants, Cross-complainants and
Appellants.

G056228

(Super. Ct. No. 30-2017-00906325)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Frederick P. Horn, Judge. Motion to dismiss appeal granted; appeal dismissed.

Anthony Nguyen, Toan Quy Thai, and Minh Nguyet Thi Nguyen in pro. per. for Defendants, Cross-complainants and Appellants.

Andrew D. Weiss in pro. per.; Law Offices of Andrew D. Weiss and Andrew D. Weiss for Plaintiffs, Cross-defendants and Respondents.

* * *

THE COURT:*

This appeal, filed by Anthony Nguyen (“Nguyen”), Toan Quy Thai (“Thai”) and Minh Nguyet Thi Nguyen (“Minh Nguyen”) (hereafter collectively the appellants) is the 14th appeal filed by Nguyen, and the fourth in which Thai and Minh Nguyen have joined him, arising from six separate state court actions concerning the same general dispute. The dispute, which had its origins in a failed romance between Nguyen and Tu Hien Nguyen (“Hien”), the former wife of Thien Tran (“Tran”), has ensnared Tran’s attorney, Andrew D. Weiss, other attorneys, paralegals, and several bench officers in Nguyen’s incessant litigation. Along the way, in addition to the state court actions, there have been numerous federal court actions filed by Nguyen as well, and Nguyen, Thai and Minh Nguyen have been declared vexatious litigants.¹

* Before Fybel, Acting P. J., Thompson, J., and Goethals, J.

¹ The other 13 appeals arising from Orange County Superior Court case Nos. 30-2014-00722268, 30-2014-00722873, 30-2014-00729544, 30-2017-00906325, 30-2017-00958200, and 30-2017-00958403 are: *Tran v. Nguyen* (Nov. 16, 2015, G051373) [dismissed]; *Nguyen v. Tran* (Nov. 15, 2015, G051378) [dismissed]; *Nguyen v. Tran et al.* (May 4, 2017, G054734 [dismissed]; *Nguyen v. Tran* (May 30, 2017, G054876) [dismissed]); *Tran v. Nguyen* (January 7, 2019, G055022) [nonpub. opn., affirmed]; *Tran v. Nguyen* (January 7, 2019, G055078) [nonpub. opn., affirmed]; *Nguyen v. Tran et al.* (January 7, 2019, G055097) [nonpub. opn., affirmed]; *Nguyen v. Tran et al.* (January 7, 2019, G055130) [nonpub. opn., affirmed]; *Nguyen v. Tran* (Nov. 30, 2017, G055427) [dismissed]; *Nguyen v. Tran* (Sept. 27, 2017, G055428) [dismissed]; *Thai et al. v. Tran et al.* (G056770) [pending]; *Nguyen et al. v. Duong et al.* (Oct. 22, 2018, G056778) [dismissed]; and *Nguyen et al. v. Tran et al.* (G057058) [pending].

A 15th appeal arising from Orange County Superior Court case number 30-2017-00906325, was filed by Minh Nguyen alone (Sept. 5, 2018, G056632) [dismissed]. Two more appellate proceedings—the 16th and 17th—were filed by Nguyen, going by the name Tuan Nguyen, arising from a separate trial court proceeding concerning another woman with whom Nguyen once had a romantic relationship ending with her obtaining a domestic violence restraining order against him (16V000883), and in which he made similar allegations of terrorist activities by the plaintiff. (*Nguyen v. The Superior Court of Orange County et al.* (Sept. 15, 2016, G053946) [pet. denied]; *Nguyen v. Nguyen* (January 7, 2019, G054555) [nonpub. opn., affirmed].

This action began with Weiss's complaint against Nguyen for malicious prosecution. Nguyen, Thai and Minh Nguyen, filed a largely unintelligible cross-complaint against Weiss, Tran, Hien, and several other persons associated with Weiss and Tran, rife with outlandish allegations that the cross-defendants are agents of various communist organizations, involved in money laundering for terrorist groups, participating in sham marriage operations, and engaging in all sorts of unseemly and criminal conduct.

The notice of appeal filed by Nguyen, Thai and Minh Nguyen (hereafter collectively the appellants), listed five orders from which they purported to appeal: (1) the May 11, 2017, clerk's entry of default against Nguyen; (2) the February 1, 2018 clerk's entry of default against Thai; (3) a February 21, 2018 minute order denying a Code of Civil Procedure section 1008 motion for reconsideration of a December 20, 2017 order imposing terminating sanctions against Thai due to his refusal to appear for his deposition after the trial court repeatedly ordered him to do so; (4) the February 23, 2018 minute order continuing the date of several hearings; and (5) the March 21, 2018 minute order² ruling on seven motions.

As for the March 21, 2018 minute order, the court (1) denied appellants' motion to "stay" the action pending "resolution of criminal cases" against Weiss; (2) denied Nguyen's and Thai's separate motions to vacate the defaults entered against them; (3) denied another motion by Nguyen to vacate the same default; (4) granted Weiss's unopposed motion to strike the cross-complaint because it failed to comply with California Rules of Court, rule 2.112; (5) granted Tran's special motion to strike the cross-complaint (Code Civ. Proc., § 425.16, anti-SLAPP motion); (6) denied appellants' anti-SLAPP motion as to Weiss's complaint; and (7) on the court's own motion revoked appellants' fee waivers pursuant to Government Code section 68636, subdivision (f) based on finding they were misusing court services.

² The notice of appeal erroneously listed the date of this order as March 27, 2018. Appellants subsequently submitted a "declaration" correcting the date of the order.

Appellants filed their opening brief. Respondents filed a motion to dismiss the appeal because most of the orders listed in the notice of appeal are not appealable. Moreover, as to the orders that are appealable or arguably appealable—i.e., the orders on the anti-SLAPP motions (Code Civ. Proc., § 904.1, subd. (a)(13)) and the order revoking appellants’ fee waivers pursuant to Government Code section 68636, subdivision (f)—appellants’ brief fails to make any cogent argument concerning those orders.³

Respondents’ motion to dismiss is well-taken and, based on the opening brief, we must grant the motion and dismiss the appeal. The law is well-established: a trial court’s judgment is presumed to be correct on appeal, and it is the burden of the party challenging it to affirmatively demonstrate prejudicial error. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) “‘When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. . . . Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.’ [Citation.]” (*Id.* at pp. 1125-1126.) “‘The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel [or the litigant if, as here, the litigant chooses to represent himself]. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.’ [Citation.]” (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) An appellant’s failure to articulate intelligible legal arguments in the opening brief may be deemed an abandonment of the appeal justifying dismissal.

³ In response to respondents’ motion, appellants filed an opposition, which does not address any of respondents’ arguments, but simply makes additional allegations of criminal conduct by respondents. Appellants also filed a motion to strike respondents’ motion to dismiss claiming they were not served with the motion. Respondents’ motion includes a proper proof of service by mail of the motion at appellants’ address of record and we deny the motion to strike.

(*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) Likewise, a failure to present arguments with references to the record and citation to legal authority can result in forfeiture of any contention that could have been raised on appeal. (Cal. Rules of Court, rule 8.204(a)(1)(B) & (C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*).)

As respondents correctly point out, only those orders and judgments listed in Code of Civil Procedure section 904.1 are appealable and the majority of the orders identified in the notice of appeal do not qualify: neither the appellants' defaults nor the orders denying motions to set aside the defaults (the May 11, 2017 and February 1, 2018 items listed in the notice of appeal) are a final judgment (it appears there is as yet no final judgment in this case) and are not appealable (*Winter v. Rice* (1986) 176 Cal.App.3d 679, 682); neither the order imposing terminating sanctions against Thai for violation of discovery orders nor the order denying a motion for reconsideration of that order (the February 21, 2018 order) is appealable (*Good v. Miller* (2013) 214 Cal.App.4th 472, 475; Code Civ. Proc., § 1008, subd. (g)); and the order continuing hearings (the February 23, 2018 order) is not an appealable order.

Within the March 21, 2018 minute order, three matters are arguably immediately appealable: the orders on the anti-SLAPP motions (Code Civ. Proc., § 904.1, subd. (a)(13)), and the order revoking appellants' fee waivers pursuant to Government Code section 68636, subdivision (f). But appellants fail to make any coherent argument concerning those orders.

Appellants' brief is indecipherable and appears to be primarily a reproduction of their cross-complaint and appellants' abundant filings in this court in their other appeals. There is no cogent statement of the nature of the action, the relief sought in the trial court, and the judgment or orders appealed from; no explanation as to why any of the orders are appealable; and no coherent summary of the significant facts limited to matters in the record. There is not a single citation to the almost 2,700-page record appellants designated for this appeal. And although they include a table of

authorities in their brief, none of those authorities are discussed in the argument section of their brief. The acronym “SLAPP” appears a few times in the brief, but nowhere do appellants engage in any argument or legal discussion concerning appellate review of the orders on the anti-SLAPP motions or offer any explanation as to why the orders should be disturbed. Appellants’ status as self-represented litigants do not relieve them of their obligation to present intelligible arguments supported by the record and legal authority. (*Nwosu, supra*, 122 Cal.App.4th at pp. 1246-1247), and their utter failure to carry their appellate burden to identify any legal error in the trial court’s rulings requires dismissal of this appeal.

DISPOSITION

The motion to dismiss is granted. The appeal is dismissed. Respondents are awarded their costs on appeal.